THE NATURE OF THE STATE

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THE

NATURE OF THE STATE

BY

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ὁ ἄνθρωπος φύσει πολιτικὸν ζῷον.
Aristotle, Polit. I, 1, 9.

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PREFACE.

THE indictment of the Homestead rioters for treason, in 1892, elicited from Gen. M. M. Trumbull, in his Current Topics in No. 269 of *The Open Court*, the following remarks:

"The prosecution of the Homestead laborers for treason is a "moral victory for them. They may now exclaim with Patrick "Henry 'If this be treason, make the most of it.' It throws grave "suspicions on the cause of the masters, that they have been driven "for vindication to conjure up the ghost of that sanguinary old "fantasy known as 'treason'; and in sarcastic harmony with all "the other parts of the serio-comic play, it has been ordered that "the Homestead men shall be tried by a 'king's jury.' Every for- "ward step taken by social and political civilisation since govern- "ments began was an act of treason in its time; and there never "was a scarcity of judges to declare it so. The law of treason has "to be dug out of mouldy statutes, and the antiquated and foolish "decisions of hired courts. A great newspaper, complimenting "the charge of the Chief Justice of Pennsylvania, wherein he ex- "pounded the tory law of treason, says: 'It is essentially the ruling "of the judge in the Chicago anarchist cases, which ruling was sus- "tained by the Supreme Court of Illinois.' The compliment is de- "served, but it might be made stronger by saying also that it was "essentially the ruling of Judge Jeffries at the trial of Alice Lisle "when that 'distinguished jurist' went the 'bloody circuit' in the

"West, a little more than two hundred years ago; which ruling, by "a happy coincidence 'was sustained' by king James the Second. "The attainder of Alice Lisle was reversed in the next generation, "as the American attainders of this generation will be reversed in "due time. Alice Lisle was put to death, but King James himself "was driven from the throne a few years afterward for tyranny, "which according to Lord Byron is 'the worst of treasons.' And "our own Lowell, with the heroic blood of historic traitors coursing "through his veins, and inspiring his genius as he wrote, has told "us that 'The traitor to humanity is the traitor most accursed; "man is more than constitutions.' The great newspaper aforesaid "insinuates also that 'the time has come when heroic treatment is "necessary, and that the Homestead affair must be used to teach "disorderly strikers that they must obey the laws.' This has ever "been the cant of kings. It was the exhortation of Strafford to "King Charles, urging him to that career of tyranny which brought "king and minister to the block; although instead of 'heroic,' "Strafford used the word 'thorough.' It is the excuse condemned "by grand old Milton, himself a traitor, where he says:

"'Necessity,
"The tyrant's plea excused his devilish deeds.'"

This remark evoked the following editorial comment, published in the same number:

"The above note of General Trumbull seems to us to call for "special editorial comment. Is not our highly esteemed contribu- "tor here carried away by his sympathy for one party—viz., the "strikers—and thus become unjust toward the other—the State? "His glorification of treason is a masterpiece of eloquence; it is "excellent in sentiment, and breathes a lofty love of freedom, but "it seems to us that it is not sound in logic, and so will not stand.

"The impeachment of the Homestead strikers for treason was "made in the name of the State—of the same State whose authority "was inconsiderately trampled under foot by the strikers. In our

"American society where the State as a rule is so little thought of, "so often ridiculed, and sometimes even despised, it is praiseworthy "that the Chief Justice of Pennsylvania courageously stands up for "the dignity of the State. The State is that power which protects "peaceful citizens in their industrial pursuits; it protects also our "liberal institutions, freedom of thought, free speech, and a free "press. Without the protection of our liberties we could not fear- "lessly publish all sides of a question as we actually do.

"What is treason? Treason is that crime which directly at- "tempts to undermine the existence of the State.

"While it is true that all ruling classes such as usurpers, ty- "rants, monopolies, aristocracies, and castes, are in the habit of "branding every attempt at reform or progress as treason, General "Trumbull goes too far in speaking of treason as the ghost of a "sanguinary old fantasy. He exalts treason; and his argument "makes it appear as if real felonious treason did not exist. The "State in order to maintain itself must defend itself against treason. "The State that suffers treason not only becomes ridiculous but "will soon terminate its existence.

"What would become of society if General Trumbull's view "should prevail! Guiteau must have read similar encomiums on "the sublimity of treason. With General Trumbull's argument, "he could at least regard his impeachment as a 'moral victory.' "Being condemned for felony and murder, he suffered, in his own "opinion, the death of a reformer and martyr. It was more piti- "able than grotesque when that poor, misguided wretch died on "the scaffold with the shout 'Glory, glory, hallelujah!' on his "lips.

"The Chicago Anarchists were tried for murder and for con- "spiracy to murder, a crime of which they were not guilty, at least "of which they were not proved to be guilty. They should have "been tried for treason. *The Open Court* was strongly opposed to "their execution, and since that time we have not changed our "opinion. The execution of the convicted anarchists was neither

"fair nor just because public opinion was, during the trial, too "much excited to make an impartial judgment possible. We be- "lieve that in the case of anarchists, as in all similar cases, clem- "ency should be used. In the case of the anarchists we must not "forget that society as a whole was not without grievous faults; "society not only tolerated their rampant speeches, but whole "classes, among them many respectable citizens and great daily "newspapers, approved of a warfare of class against class, with "dynamite and by other insidious methods. To be sure, it was not "recommended for our trouble at home, but it was encouraged in "England and Ireland. As soon as the evil results appeared, the "severity of the law was too suddenly resorted to. Nor should we "forget that the anarchists were not common criminals, but were "misguided idealists.

"But exactly because misguided men are too easily carried "away and led to commit criminal acts, strikers should be care- "fully informed that a difference exists between the legitimate "aspiration of improving their condition and treason.

"Lowell is right when saying that man is more than constitu- "tions. So life is more than the rules of health. But at the same "time, the State is not less than the citizens of the State. A State "is a real and indeed a superpersonal being. States have been "preserved and must be preserved even at the sacrifice of many "human lives.

"We grant that that State is the best which allows as much "liberty as possible to its citizens. So far the principle of indi- "vidualism is quite right. The highest ideal of a State is therefore "a republic. A republic is a State in which all the citizens are "sovereign kings. The principle of individualism that pervades "republican institutions is good. But an individualism that goes "to the extent of abolishing the State, that pooh-poohs its authority "and threatens its very existence, throws us back into the barbary "of savage lawlessness.

"When we are confronted with events such as the Homestead

"trial, we demand that every reason for clemency be heard and "respected; let us also make ample allowance for the sentiments "of the men implicated in the affair. They cannot be regarded as "common criminals, even though they committed criminal offences. "Let us not suppress treason by committing treason. If our author- "ities unrighteously and without giving due allowance to those in- "dicted for treason condemn them through the instrumentality of "packed juries or other lawyer tricks, they become guilty of op- "pression and tyranny; and truly, as General Trumbull rightly "says, quoting from Byron, 'Tyranny is the worst of treasons.' "But on the other hand let everybody know it, and let everybody "mind it, that employers as well as laborers, the companies plotting "a lockout and the strikers quitting work, in short, that everybody "without exception, must obey the laws, and that the State will "not and cannot suffer its authority to be disregarded."

A number of letters received at *The Open Court* office proved the wide interest taken in this subject, and several of them were published at the time in *The Open Court's* columns (Nos. 272, 275, 279).

The following essay was suggested and written on this occasion, and appeared first in several instalments as editorial articles in *The Open Court* (Nos. 272, 334, 335, 336, 337). It appears to us that a correct comprehension of the nature of the State and also of the nature of treason, i. e., of the attempt to subvert the existence of the State, is of great importance in a republic. The occurrence of such crimes against society as were recently committed by dynamiters in Barcelona and in Paris, and also the efforts of strikers, repeatedly manifested in this country, to wreck railroad-trains conducted by men who have taken their places, claim our attention and make it desirable to spread broadcast a sound knowledge concerning the nature of the State, its main functions and purpose, among all classes of society, especially among those who for some reason or other find it advisable to struggle and strike for an improvement of their condition.

PREFACE TO THE SECOND EDITION.

AFTER all the State does exist. Recent events in Colorado illustrate the truth of this statement.

We may add here that unions and corporations of any kind, too, are realities. They constitute organisations, whose character depends upon their by-laws and above all upon the purpose which they pursue. Such combinations of individuals into super-individual unities are called "juridical persons" because they are possessed of certain features, privileges as well as obligations, which otherwise are vested in persons only, and they are treated like persons before the law. All of them are communities, or polities, or states with constitutions of their own, but, whatever their commercial or ethical, or religious, or other importance may be, they must (so long as the State exists) remain subject to the laws of the State, for the State alone, the personification of the community as a whole, is vested with sovereignty. Therefore, those corporations which defy the authority of the Government will naturally and inevitably come into conflict with the State.

The nature of the State and also of corporations has long been misunderstood, but our political experiences are gradually forcing upon us a correct comprehension of the problem. An appreciation of the significance of super-individual existences will prove valuable not only to the jurist but also to the politician, the labor leader, the business man, and every citizen interested in the wellfare of our nation.

THE AUTHOR.

LA SALLE, ILL., July, 1904.

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THE NATURE OF THE STATE.

DOES THE STATE EXIST?

OUR artists, in portraying the various nationalities of the world, are wont to embody their ideas in lofty figures, whose faces, attitudes, and attire express the characteristic features of the peoples represented. We enjoy these works of art; and in forming our critical estimates of the designs of a Columbia, a Germania, a Gallia, or a Britannia, we look first to the truthfulness of the emblematic statue. One design may represent more faithfully than another the peculiar national features.

Now, the question arises, Is not this method of art a last remnant of paganism, which must give way to the light of modern conceptions? We are told by some that allegorical figures, like the gods of the ancients, stand for something unreal; they are chimeras and should have no place in a brain of the twentieth century. Others, because of their love of art, shrink from this iconoclastic method, and, while denying the real existence of State-institutions, nationalities, and other intangible abstractions allow to the artist what they

give to the poet, the licence of telling lies. Art, in their opinion, serves no practical purpose, but is simply a useless exercise of our powers, a mere play, or sport.

Now, we cannot accept this conception of art, nor endorse a radical denial of the existence of nationalities and States. The purpose of art is not to tell lies, but to teach the truth. The enjoyment of art consists in a learning without effort; for the task of art is to impress by intuitional revelations the various truths of life. Genuine art may be unreal, but it must never be untrue; similarly, the allegorical figures of nations, though unreal, must be true.

The tendency of the times is toward individualism, and, indeed, the glory of our institutions is, that they have, for the first time in the world's history, given, in principle at least, a most unbounded sway to individual liberty. And rightly so. It may be counted as a national characteristic of Americans that we believe in liberty, in individual liberty, and it almost amounts to treason with us to lose confidence in the feasibility of free institutions and in the inalienable right of every one of us to liberty.

True it is that this theory remains too much mere theory. Having free institutions we are not at all jealous of our liberties. We allow inroads upon our rights to be made almost daily and do not object. Even our legislatures, the national legislature at Washington not excepted, have passed bills, which, closely considered, are unconstitutional.

Individualism being recognised, at least theoretically, as a tendency of the time, its principle is often misunderstood, and its mistakes carried to an extreme. There are people who flatly deny the existence of society, State, nationality, or of any superindividual entity. They declare that the individual alone exists: the individual is a reality; but society, the nation, the State, are mere collective terms for a number of individuals. If this be so, has not the iconoclast a right to break the idols and to destroy them, be they ever so beautiful and artistic?

We trust that we can prove to the satisfaction of every unbiassed individualist that the allegorical figures representing nationalities, States, cities, or other superpersonal beings, possess a meaning, so that after all they are not the senseless vagaries of an idle imagination.

Several years ago I came across a pamphlet in which the author, a German-American journalist, holding a prominent position on the greatest German newspaper of New York, undertook to prove that nationality does not exist; for, he asked, what is nationality? Is it constituted by the territory of a nation? No, for there are people of alien nationality living in the territory of every nation. Does it consist of blood-relationship? No, for immigrations take place among all the nations on earth, and foreign blood is constantly infused everywhere. Is perhaps the language the distinguishing feature of nationality? No, not even the language con-

stitutes nationality, for German is spoken outside of Germany, and English outside of England; while there are many subjects of the English and German Empires whose vernacular is not that of their country. *Ergo*, the author of the pamphlet argues, nationality does not exist, and a nation is only a number of individuals.

These arguments are plausible; and yet they are obviously superficial. Suppose a chemist wished to know what a clock is, and began his inquiry by analysing the substances of which the clock consists. He would find only copper and iron and other chemical elements, but no clock. Would he be entitled to conclude that clocks do not exist, that there are heaps of brass wheels and cogs, but no clocks, and that the mere idea of a clock is the product of a feverish imagination?

The same argument which disproves the existence of the State and of other superindividual entities, will serve to disprove the existence of the individual. For what is an individual? Does an individual consist of matter? No, certainly not! For the material particles of which an individual, so-called, consists are constantly changing. Man's body is in a constant flux. Is an individual constituted by the titles, possessions, and rights he enjoys? No, he is not, for he may lose them or acquire new ones. Well, then, is perhaps an individual the totality of his ideas and aspirations? Even the ideas and aspirations of a man are not con-

stantly the same; he sometimes forgets or neglects the aspirations which in past years were very powerful in him, and he will in the future most probably be swayed by new ones of which at present there is no trace in his soul. So let us conclude that individuals do not exist, and that the assumption of individuals is a mere illusion; it is a pet superstition of the day.

These arguments are just as valid as those that prove the non-existence of the State. And yet facts speak louder than syllogisms. Whether or not the existence of individuals be proved, here we are, real beings; and whether or not we deny the reality of the State, here we live in the actual world of a definite relationship, called the United States of America. We receive protection in our industrial pursuits and enjoy many other of the innumerable benefits of public order; they are all very real; and he who is blind to their reality cannot be blind to our paying taxes, which may sometimes be out of proportion to our estates or unjustly levied. And yet, who would deny the reality of the State as a tax-gathering entity!

The point is this, there are realities which do not consist of matter or substance, but of relations, realities which are not concrete objects. These relation-realities, it is true, do not exist of themselves, hovering in the air as ghosts or demons, like the gods of pagan mythology, but, for all that, they are not nonentities. There are no souls by themselves; no metaphysical ego-entities behind our thoughts and as-

pirations. Nevertheless, souls exist. My soul is that peculiar and individual combination of ideas and inclinations of which what I call "myself" consists. Souls and also nations are real enough, and whether a relation is geographical, political, or otherwise, is often of paramount importance.

The relations which we call society, nationality, and State are not mere phantoms, but realities for the preservation of which individuals are ready to fight, to sacrifice their possessions and even their lives. We admire a Cato who committed suicide, we praise the Cimbric women who slaughtered themselves and their own children, because they would not survive that peculiar kind of society in which they lived. We glorify the death of every hero who dies for his country. Shall we say that it is a mere shadow for which patriots die, that nationality, the institutions of a nation, and the State, are superstitions of the day, and that they have no real existence?

WAS THE INDIVIDUAL PRIOR TO SOCIETY?

ALL this granted, the objection has been made, that the State and society in general are after all only relations among individuals. Individuals were first, and society is a contract made by individuals. Society, accordingly, is said to be not superindividual, but is represented as a relation subservient to the wants of individuals. The individual does not exist for the sake of the State, but the State for the sake of the individual.

The question whether the individual or society was first, reminds one of the parallel question, whether the hen or the egg was first. And the answer to both questions is, Neither was first.

The hen-and-egg problem is briefly explained thus: First was living substance which reacted upon the stimuli of its surroundings in a special way. And the constant repetition of these reactions produced habits. Living substance is not only intrinsically immortal, but it also grows. Now when a division of labor

changed growth into propagation, individual existence began, introducing at once birth and death, and confining the work of propagation to a certain organ producing germs. Every germ contains the memories of its ancestral lives and brings in the course of its development the disposition of its habits into being. Thus the germ originates simultaneously with the individual, and the egg is coeval with the hen.

Similarly, the individual (viz., the human individual or man) was as little before society as society was before the individual. All those features which make of man a human being have originated solely through social intercourse, and in this sense it is quite proper to say, that man is the product of society. There is no human society without a number of men to constitute it, and in this sense again it is proper to say that society is constituted by individuals. Yet society can be constituted by a number of individuals only if in the souls of the individuals are impressed those marks of social intercourse which find their expression in a common language, common interests, and common ideals.

Sweep your soul of all you owe to society and what is left of you—a speechless and soulless being, a brute. Further, the highest aspirations of your life can be realised only through your communion with human society. How blind to facts are those who deny the actual existence of society with all that it implies !

Eating and drinking, or enjoyments of any kind,

and the continuance of our existence, are not the highest aims of life. There are higher aspirations, the aims of which are of a more subtle nature than can be analysed by the gross methods of a hedonistic philosophy. And strange: those who maintain that society exists solely for the sake of the individual, are generally ready to deny most emphatically, from sheer antagonism to biblical mythology, that the earth and what grows upon it have been created for the benefit of man!

When investigating the question of purpose, whether society exists for the sake of the individual, or the individual for the sake of society, we must not forget that we are here dealing with a self-made puzzle. When we confront a relation, we can neither say that the one part of it exists through the other nor the other through the former one. The relation is the whole and its parts are mere abstract views, which as such, i. e., as parts of the relation, do not independently exist. We might as well say, there are husbands independent of wives, or wives independent of husbands. This is obviously nonsensical, because the relation between husband and wife, with all it implies, constitutes what we call husbands and wives.

Husbands do not exist for the sake of wives, nor *vice versa*; but the marriage relation as a whole has a special purpose.

Thus man does not exist merely for the purpose of being a representative of humanity. *Vice versa*, human-

ity (viz., all those features which have been developed through social intercourse and constitute the human in man) does not exist simply to be either an ornamental or useful quality of a certain kind of two-legged being. But both exist in, with, and through each other. Humanity would be an empty word if it were not a living reality in the brains of individual persons, and men would not exist as men, as human beings, if it were not for the humanity that fills their souls with noble contents and ideal aspirations. But if we take both as the realities which they represent, humanity is the larger and higher being, for it comprises the individuals. The individuals are after all only parts of humanity, and humanity is a superindividual existence.

A nation, it is true, is no concrete object, no constant and unvarying being. But closely considered nothing is stable, and least of all an individual.

That which we call a rose-bush is a rose-bush still, even though some branches be broken off. A rose-bush seems to be a concrete thing, strictly limited and defined. But it is not. It is a thing of varying qualities. The name which is attributed to it, suggests a constancy and permanency that is foreign to its nature. The same is true of all things. The whole world is a tremendous whirlpool of changes, and that which we call objects are certain eddies or waves ; they are units to our appearance, but limited by ill-defined boundaries. There is no object in the world which as such and such a thing, is an independent existence : all are

parts of the whole. The names by which we designate these parts include innumerable relations to the whole and without these relations the names would cease to be appropriate for the things. For instance, one of the qualities of a chair is its purpose of serving as a seat. Suppose this purpose to be absent and we should no longer call the object a chair.

Human society is a very complex organism, and all the single organs through which it manifests its existence are very wonderful, not to say mysterious, entities, leading a life of supermaterial reality, each one capable of development, subject to decay as well as to higher evolution. Such are language, religion, historical traditions, customs and ceremonials, moral views, juridical institutions, political ideals, educational systems, economical, military, or other institutions. The State, however, is a modern offshoot of society which has established itself in a special and limited territory, and for obvious reasons (mainly to prevent arbitrary applications of the principles of its being) has codified the most important of its relations into statutes called laws.

The view here presented, establishing the principle of societism as an actual and real factor in the evolution of mankind, does not, be it well understood, abrogate that other principle which is called individualism. On the contrary, it explains it and complements its maxim, which by itself is one-sided, untenable as a working principle, and even nonsensical. Individual-

ism, the glory of our republican institutions, is not a denial of societism, but its counterpart. Individualism maintains that society, even considered as a society, will prosper best where the factor of individualism has full play. Let all the places in a society be open to free competition and let there be elbow-room for all the individuals, so that everywhere the best may come to the front. It is not probable that an increase of comfort or of individual happiness will be the result of the full application of this principle ; hence the opposition of the ruling classes to individualism. On the contrary, it will make it harder for him that has an easy lot in life, to maintain it. But society as a whole will be benefited, and mankind will progress at greater strides than ever before.

THE STATE A PRODUCT OF NATURAL GROWTH.

WE HAVE answered the question "Does the State exist?" in the affirmative; for the social relations between man and man are actual and important realities. How a number of citizens are interrelated, whether in the form of a patriarchical community, or of a monarchy or of a republic, is by no means a matter of indifference; these interrelations are real; and they are a vital factor in the concatenation of causes and effects. They may be compared to the groupings of atoms and molecules in chemical combinations. The very same atoms grouped in two different ways often exhibit radically different phenomena; so that we naturally incline to believe that we are dealing in such cases with different chemical substances. In like manner, the same race of men will exhibit different national characteristics if combined under different systems of society and State-organisation.

But there are other problems connected with the idea of the reality of social relations. The questions

arise: What is a State? What difference obtains between society and State? And, granted that society has a right of existence, is not perhaps the State a tyrannical institution which must be abolished?

State is obviously a narrower concept than society. The State is a special form of social relations. Society is the genus and State is a particular species. Social relations are first, and out of them States develop. States are more fixed than the primitive social conditions from which they come.

As animals of definite kinds are more stable in their character than the amœboid substance from which they have taken their common origin, so States are a further step forward in the evolution from primitive social relations. This is the reason why the absence of State-institutions is commonly regarded by anthropologists and historians as a symptom of extraordinary immaturity in a people. And justly so, for no civilised nation exists whose citizens are not united by the social bonds of State-life, and only the lowest savages are without any form of State-institutions.

The State has frequently been called an artificial institution while primitive society is supposed to be the natural condition of mankind. In this sense Rousseau regarded all culture and civilisation as unnatural. This view is ridiculous and absurd. All progress on this supposition would have to be branded as an aberration from nature. We think that on the contrary every advance in evolution denotes a higher kind of

nature; man's progress is based upon a clearer comprehension of nature and consists in his better adaptation to surrounding conditions. Thus these nature-philosophers in their efforts to be natural, reverse the course of nature and become unnatural in the highest degree. The State is as little artificial (i. e. unnatural) in comparison with the so-called natural condition of savage life, as the upright gait of man can be said to be artificial as contrasted with the walk of quadrupeds. The State is of natural growth not less than the other institutions of civilised society. We might as well decry (as actually has been done) the invention of writing and the use of the alphabet as unnatural.

What is the nature of the State?

The State briefly defined is "the organisation of the common will of a people."

The common will of the people may be poorly, disproportionately, or even unjustly represented in the State-organisation. It is a frequent occurrence that large classes do not assert their will, either because they do not care to assert it or because they are too timid to do so, so that the State is little influenced by them. But that is another question. In defining the nature of the State, we do not say that all states are perfect, nor do we defend the evils of their inferiority.

Every horde of wild animals possesses certain common interests, for it is these very interests which make them a horde. A horde of talking animals, however, will soon become aware of their common interests.

They will, in discussing the problems of their tribal life, more and more clearly understand the situation and regulate the means of attending to the common interests according to their best experience. Common interests create a common will, and as soon as this common will becomes consciously organised by habits, traditions, and the ordinances of those who have the power to enforce them, by written or unwritten laws, by acts of legislatures, or similar means, the primitive social life enters a higher phase of its evolution: it changes into a State.

The State-relations do not cover all the social relations of a people, but only those which are created or animated by their common will. All the other relations among the single citizens of a State, that is those which are of a private nature, stand only indirectly in connexion with the State-relations.

The State is not constituted by laws and institutions alone; the State is based upon a certain attitude of the minds of its members. The existence of a State presupposes in the souls of its citizens the presence of certain common ideas concerning that which is to be considered as right and proper. If *these ideas* were absent, the State could not exist.

That our life and property in general is safe, that we buy and sell, marry and are given in marriage, that the laws are observed, and that in ordinary circumstances we hold intercourse with one another mutually trusting in our honest intentions; that, also, we strug-

gle and compete with one another and try our best to maintain our places in the universal aspiration onward :—all this is only possible because we are parts of the same humanity and the children of the same epoch, possessing the same ideas of right and wrong, and bearing within ourselves in a certain sense the same souls.

Could some evil spirit, over night, change our souls into those of savages and cannibals, or even into those of the robber-knights of the Middle Ages, all our sacred laws, all our constables, all the police-power of the State would be of no avail : we should inevitably sink back to the state of civilisation in which those people existed. But could a God ennoble our souls, so that the sense of right and wrong would become still more purified in every heart, then better conditions would result spontaneously and much misery and error would vanish from the earth. And the God that can accomplish that, lives indeed—not beyond the clouds, but here on earth, in the heart of every man and woman.

It is the same power that has carried us to the state of things in which we now are ; it is the principle of evolution, it is the aspiration onward, the spirit of progress and advancement.

The State is based upon certain moral ideas of its members ; and State-institutions, such as schools, laws, and religious sentiments, exist mainly for the purpose of maintaining and strengthening the moral ideas of the present and future generations.

We do not intend to discuss here the evolution of the State. Nor do we propose to estimate the moral worth of its present phase. The ideals of the various existing States are just emerging from a barbarous world-conception, and we are working out a nobler and better future. Should this better future be realised, let us hope that our posterity will still feel the need of future progress as much as we do now. We simply wish to elucidate the nature of the State so as to understand the purpose and the laws of its evolution.

The objects upon which the common will of a people is directed are, (1) protection against enemies, (2) the administration of justice among its members, (3) the regulation of common internal affairs; which last point, in higher developed States, consists of two distinct functions, (*a*) of establishing the maxims according to which the commonwealth is to be administered, and (*b*) of executing these maxims and enforcing them.

The need of protection against foreign enemies has created our armies and navies, which, in their present form, are quite a modern invention. That powerful State-communities were not satisfied with defending themselves, but frequently became aggressive, either for the sake of a more effective defence or from a pure desire of aggrandisement, is a fact which has nothing to do with our present subject. Warfare is the main, but not the sole, external function of the State. It has been supplemented in modern and more peaceful times

by commercial treaties and other international adjustments.

The internal functions of the modern State are performed by the judiciary, by the legislative bodies, and by the executive government. All these organs of the State have become what they are in quite a natural course of evolutionary growth simply by performing their functions, like the organs of animal bodies.

A certain want calls for a certain function, and the performance of this function develops the organ.

The State has been compared to an organism, and this comparison is quite admissible, within certain limits.

True enough that the historical growth of our modern States is within reach of our historical tradition, and we know very well that one most important factor of this growth has been the conscious aspiration of individuals after their ideals—a factor which is either entirely absent from or only latent in the development of organs in animal organisms. The assumption that the cells of the muscles, the liver, or the kidneys, are conscious of the work they perform, that they have notions of duty and ideals, is fantastical. Moreover, there is no need of resorting to this explanation, since the theory that function develops organs, together with the principles of selection and of the survival of the fittest, sufficiently accounts, if not for all problems connected therewith, yet certainly for the problem of their existence in general.

As a factor in the development of States the conscious aspiration of individuals for their ideals even, in practical life, cannot be estimated high enough; for this factor has grown in prominence with the progress of the race, and it is growing still. In the explanation of the origin of States, however, this very factor can most easily be overrated, and it has been overrated, in so far as some savants of the eighteenth century, the great age of individualism, have proposed the now obsolete view that States are and can be produced only by a conscious agreement among individuals, which, however, they grant, may be tacitly made. And this theory found its classical representation in Rousseau's book, "Le contract social," in which the existence of the State is justified as a social contract. This is an error: States develop unconsciously and even in spite of the opposition of individuals; and it is a frequent occurrence that the aspirations of political or other leaders do not correspond with the wants of their times. Thus it so often happens that they build better than they know, because they are the instruments of nature. The growth of States is as little produced by conscious efforts as the growth of our bodies. Conscious efforts are a factor in the growth of States, but they do not create States.

A State grows solely because of the need for its existence. Certain social functions must be attended to; they are attended to, and thus the State is created as the organ of attending to them.

Conscious aspirations, although they do not build States, are indispensable for properly directing the State-creating instincts of a social body. In like manner, an intelligent observation of hygienic rules is not the creative faculty that produces the growth of organs, but it is an indispensable condition keeping the organs in good health. The more clearly the common wants of a nation are recognised, the better will be the methods devised to satisfy them. The more correctly the nature of society and of its aims is understood, the more continuous will be the advance of civilisation.

The social instincts which have created the State, the love of country, and of the country's institutions and traditions, are so deeply ingrained in individuals that in times of need they come to the surface, (sometimes timely, sometimes untimely,) even in spite of contrary theories. Let the honor of a country be attacked and you will see that hundreds and thousands of the people, who from their individualistic point of view deny the very right of existence to our national institutions, will clamor for war.

When, on the 14th of July, 1870, the King of Prussia was officially and ostentatiously affronted by the French ambassador, Benedetti, the most peaceful citizens of Germany were ready to make the greatest sacrifices in resentment of Napoleon's insolence, and the democratic party dwindled away in the general excitement. The effect in France was similar; the King's refusal to receive the French plenipotentiary was so

generally resented, that the Emperor's opposition, although very strong before, disappeared at once in the almost unanimous cry for vengeance.

The social instincts, and among them the State-forming instincts, are much stronger and more deep-seated than most of us are aware of. They do not on every occasion rise into consciousness, but slumber in our hearts, and even in the hearts of our anarchists and individualists; these instincts form part of our unconscious selves and will assert their presence, if need be, even in spite of our theoretical selves, which are only superficially imposed upon our souls.

* * *

It may be objected that sometimes States have been artificially established with conscious deliberation by mutual agreements which were fixed in laws. This is quite true: conscious efforts are made and have to be made to give a solid shape to a State. The Constitutions of the United States, of Belgium, and of the German Empire are instances of this.

Conscious efforts indeed serve and should serve to regulate the growth of States; they determine the direction of its advance, and bring conflicting principles into agreement. Thus struggles are avoided, and questions which otherwise would be decided by the sword, are settled in verbal quarrels, more peacefully, quicker, and without loss of life.

When the fathers of our country came together to form a bond of union, they did not create the nation

as a federal union, or, so to say, as a State of States, they simply regulated its growth and helped it into being by giving obstetrical assistance. The union agreed upon by the representatives of the thirteen colonies was not, however, the product of an arbitrary decision, but the net outcome of several co-operating factors, among which two are predominant: (1) the ideas which then lived in the minds of the people as actual realities, and the practical wants which, in the common interest of the colonies, demanded a stronger unity and definite regulations as to the methods of this unity. The representatives themselves were not mentally clear concerning the plan of the building of which they laid the foundation. The political leaders of the time (perhaps with the sole exception of Hamilton, who, on the other hand, fell into the opposite mistake of believing that a State ought to be a monarchy) were anxious to make the union as loose as possible, for they were imbued with the individualistic spirit of the eighteenth century. So they introduced (and certainly not to the disadvantage of the union!) as many and as strong bulwarks as possible for the protection of the so-called inalienable rights and liberties of individuals. The United States developed, and developed necessarily, into a strong empire, although its founders were actually afraid of creating a really strong union.

In those times it was thought that a State-administration could be strong only through the weakness of its citizens. Weakness of government was regarded as

the safest palladium of civic liberties. We now know that a powerful administration is quite reconcilable with civic liberty. In fact, experience shows that weak governments, more than strong governments, in the interests of self-preservation, resort and cannot help resorting to interference with the personal rights of its citizens.

The Belgians, after having overthrown the Dutch government, shaped a new State exactly in agreement with the ideas they held. If they had not previously possessed social instincts and lived in State-relations, they would not have been able to form a new State so quickly.

The idea of a united Germany developed very slowly; it was matured in times of tribulation and gradually became quite a powerful factor in Germany's national life. The foundation of the Empire would remain unexplained, were we only referred to the debates of the Reichstag and the resolutions finally adopted. The resolutions drawn up after a longer or shorter deliberation form only the last link in a very long process of concatenations. Yet these last conscious efforts, although of paramount importance, presuppose already the conditions for the constitution of the Empire in its main features.

The existence of Empires and States does not rest upon the final resolutions passed at the time of their foundation, but upon the common will of the people,

which, such as it is, has been shaped in the history of national experiences.

The United States developed in spite of the individualistic clauses of its founders; and in the same way Luther, the prophet of religious individualism, advocated principles, the further evolution of which in such minds as Lessing and Kant, he from his narrow standpoint would never have consented to. He was the harbinger of a new epoch, but he was still the son of the old theories. Like Moses, Luther led the way to the promised land, but he never trod upon its ground. His actions, more than his ideas, were the reformatory agents of his life, and we may well say now that he himself little appreciated the principles that underlay his reformatory and historical actions.

The philosophers of the eighteenth century, especially Rousseau and Kant, recognise the State only in its negative rights. The State, according to their principles, is a presumption, and its existence is only defensible as protecting the liberties of its members. The rights of the State are supposed to be negative. The liberty of each member of a society is limited by the equal amount of liberty of all the other members, and the State's duty is to protect their liberties. If this principle were the true basis of the State's right to existence, the State would not be justified in levying taxes or in passing laws which enforce any such regulations as military or juror's service. Appropriations for the public weal would be illegal, and all executive of-

ficers would have to be regarded as a band of usurpers. As a matter of fact, States have constantly exercised their positive rights, interfering greatly with the liberties of their citizens. They have taxed them, they have passed and enforced laws. And the State could not exist without having this authority. The State is actually a superindividual power and has to be such in order to exist at all.

THE MODERN STATE.

THE State-ideal of classic antiquity (expressed in Plato's books "On the State" and "On Laws"; in Aristotle's "Politics," and in Cicero's fragmentary essay "On the State") exhibits, alongside of a reverence for the State, a disregard for the weal of its citizens. The mediæval conception, mainly represented by Thomas Aquinas's work, "De Rebus Publicis et Principum Institutione," and also by Dante's "De Monarchia," founds the State upon the theological thesis that the government's authority is a divine institution: the last great representation of this view, in a modernised form, is Stahl's "Philosophy of Law." Against the oppressions which were sanctioned by a wrong enforcement of the absolute authority of the State arose another conception, which may be called the State-ideal of individualism. The individualistic conception represents the State as a social contract. Its most important advocates are Hobbes, Locke, Grotius, Puffendorf, Montesquieu, and Rousseau.

It is more than doubtful whether it is possible to

realise a truly individualistic State, for the most thoroughgoing individualists deny all the essential rights of States and will consistently have to accept anarchism. The individualistic principle, nevertheless, introduces a new element which constitutes the very nerve of the modern State-ideal.

While recognising the authority of the State to make laws, (and no law is a law unless it is, when not willingly obeyed, enforced,) we do not advocate the old view of the State which splits the nation into two discrete parts, the government and its subjects, the rulers and the ruled. The modern State-ideal differs from the old conception. It knows no rulers, but only administrators of the common will. The modern State-ideal knows no sovereign kings, emperors, or presidents; it knows only servants of the State. And this ideal of the modern State was (strangely enough !) propounded and partly practised for the first time by a monarch on the continent of Europe at a time when monarchs were still recognised as possessing absolute power. This innovator is Frederick the Great, author of the famous book "Antimachiavelli," who, although born to a throne, was conscious of the duties of the throne and scorned the arrogant pretensions of the sovereigns of his time whose poor ethical maxim had been condensed by the French king, Louis XIV, into the famous sentence, *L'état, c'est moi!*

Frederick wrote to the young King Charles Eugene of Würtemberg (1744):

"Do not think that the country of Würtemberg is made for your sake, but the reverse; providence has made you in order to make your people happy. You must always prefer its welfare to your pleasure."

In the "Memoir of Brandenburg," 1748, he wrote:

"A prince is the first servant and the first magistrate of the State, and it is his duty to give account to the State for the use he makes of the public taxes."

The same idea is inculcated in his last will (written 1769):

"I recommend to all my kin to live in good concord, and if it need be to sacrifice their personal interests to the weal of the country and to the advantage of the State."

Frederick's idea does away with the personal sovereignty of rulers and makes the State itself sovereign; it abolishes rulers as such and changes them into administrators of a nation's public interests and into commissioned executors of the common will.

If this is true of monarchies, it is still more true of republics. The President of the United States is not the temporary sovereign, but the first servant of the nation, commissioned to attend to certain more or less well-defined duties.

The modern State-ideal has been matured by the individualistic tendencies of the eighteenth century. The reason is obvious: The modern State-ideal imposes the same obligations upon rulers as upon subjects, and elevates accordingly the dignity of the subject. It makes all alike subject to duty, thus recognising law

simply as an expression of the superhuman world-order. Yet, although the modern State adopts the principle of individualism by recognising the inalienability, as it has been styled, of certain rights of its citizens, we cannot say that individualistic philosophers have succeeded in establishing a tenable philosophy of law or in shaping the true State-ideal either of their own times or of the future.

* * *

Rousseau, in his book "Le contract social," makes a very keen distinction between the will of all and the common will, saying that the former is dependent upon private interests, while the latter looks to the common weal. The former is only "the sum of the individual wills." If Rousseau had consistently applied this distinction to his theories, his favorite error of the social contract would have been seriously endangered.

The common will is the product of social life, it is the will of establishing the solid foundations of peaceable interrelations among the members of a community, and this will can originate even though all single individuals may attempt to escape from its enactments. There being the stern necessity of social bonds under penalty of destruction to the whole community, the common will develops as a most powerful moral feature in every single member of the tribe as a kind of tribal conscience demanding universal obedience to certain general rules or laws. All the citizens of a community may agree in this, that everybody regards him-

self as exempt. Such a state of affairs would make a State very unruly without, however, necessarily annihilating the common will and therewith the State itself. For, we repeat, the common will is different from the sum total of all wills; and the enactments of the common will might on the contrary be, and usually are, in such anarchical conditions, only the more severely enforced. The more the execution of the common will is assured, the more leniency is possible; the more precarious its existence, the more relentless, ruthless, and cruel have been its enactments.

* * *

The individualistic philosophy always had trouble in accounting for such facts as States and other super-individual institutions. In explaining them they always fall back upon individuals, as if the individual members of human society had first existed singly as human beings and had created their language, laws, religions, or any other interrelations by mutual consent, by a tacit contract, θέσει not φύσει, by designing artificial plans and not in the course of a natural growth. Thus Mr. Spencer, a chief representative of individualism, explains the evolutionary origin of institutions, customs, religious dogmas, etc., as follows:

"The will of the victorious chief, of the strongest, was the rule of all conduct. When he passed judgment on private quarrels his decisions were the origin of law. The mingled respect and terror inspired by his person, and his peerless qualities, then deemed supernatural by the rude minds that had scarcely an idea of the

powers and limits of human nature, were the origin of religion, and his opinions were the first dogmas. The signs of obedience, by which the vanquished whom he spared repaid his mercy, were the first examples of those marks of respect that are now called good manners and forms of courtesy. The care he took of his person, his vestments, his arms, became models for compulsory imitation; such was the origin of fashion. From this fourfold source are derived all the institutions which have so long flourished among civilised races, and which prevail yet." *

This shows a palpable misconception of the real problem. In some of these primitive States and tribal principalities a chief rules supreme and commands, in certain affairs, absolute obedience. We say "in some," not "in all" of these States, for the savage States are as different among themselves as are the States of civilised mankind. There are perhaps as many democracies in darkest Africa as absolute monarchies. Mr. Spencer's view of the origin of religion, ceremonies, and fashions, is not correct. For although a chief may be omnipotent as a commander in war, he will be unable to bring about a change of the religious ideas of his subjects. A chief's power is not the creator of the common will in a tribe which makes institutions, religion, ceremonies, and fashions, but the reverse, his power as a chief is its product. The members of the tribe obey him, because the common will enacts obedience. Mr. Spencer, accordingly, puts the car before the horse. He is blind to the real problem. Instead of explaining the authority of the chief from the com-

* Quoted from *Outline of the Evolution-Philosophy.*

mon will organised in a primitive State-institution, he explains the existence of the State-institution by the authority of the chief.

Individualism ought not to be made a theory of explanation, for it is utterly incorrect and explains nothing. But while it is a wrong theory it is nevertheless a correct principle; it stands for the rights of all individuals and demands the recognition of their dignity. As a principle it is a factor, and indeed a most important one in social life. But it is not its sole principle, and we fall into confusion when we use it as an explanation of the intricate phenomena of the development of society and of the State.

The modern State-ideal, viz., the individualistic State-conception preserves the truth of the ancient and mediæval conceptions, but together with them it embodies the principle of individualism. It limits the State authority by the moral purpose imposed upon State-administrations, but in doing so, it raises it upon a higher level and sanctifies its existence.

* * *

There is a notion prevalent concerning republics, that they can replace the royal government of monarchies only by a government of majorities. It is true that most republics, including our own country, are sometimes actually ruled by a majority. If, however, the State is to be the organisation of the common will, we see at once that a majority rule cannot as yet be the highest ideal of a State. Majorities can only be called

upon to decide certain questions of expediency, they have no right, either to tamper with the inalienable rights of citizens, or to twist the moral maxims upon which the State institution has been raised, so as to suit their temporary convenience, or even to pass laws that stand in contradiction to them. Laws passed by the majority may be regarded as the legislative body's present interpretation of the moral laws that underlie, like a divine sanction, the existence of the State; but upon him who is convinced that the laws are immoral, the duty devolves to use all legal means in his power to have them repealed.

The most important legal means of abolishing immoral or unjust laws is agitation, so that the *pro* and *con* of a question can be openly discussed. Says Milton:

"Whoever knew Truth put to the worse in a free and open encounter?"

Freedom of speech, freedom of the press, freedom of person are the corner-stones of free institutions. They are sacred rights which no majority government should dare to touch. The State has a right to levy taxes, provided they are justly proportioned and do not greatly exceed its necessary expenses. The State is also entitled to demand of its citizens the performance of a citizen's duties, which in times of need may grow into extraordinary sacrifices. For in cases of war we must be willing to offer even our lives for the welfare of the country. But the State has no right

to pass laws in favor of certain classes, or to create monopolies, or to prescribe a peculiar kind of religious worship.

There are some questions in life, and also in the political life of nations, in which it is less important *how* they are decided, than *that* they be decided. Whether a travelling party shall take the seven o'clock train or the eight o'clock train is perhaps quite immaterial, the only requirement being that either the one or the other hour be decided upon, so that arrangements can be made that all may leave together. Such questions as whether a public enterprise should be aided with one million dollars, or with two, or not at all; whether, for coast-defence, ten or twelve men-of-war should be built, etc., etc., are best decided by majority votes. They become actually right by being the pleasure of the majority. Real moral questions, however, are of a different nature. They are right or wrong, independently of majorities.

No majority vote, not even the consensus of all, can make a wrong law right. The majority can enforce bad laws, and put them into practice, but it can justify them as little as a ukase of the Czar. Even the formal legality of immoral laws may be doubted; for, even though it be the expression of the will of all, it may not be an expression of the common will, and we have learned that there is a difference between the two, and the authority of the State is founded upon the latter, not the former.

We do not intend to discuss problems of casuistry with reference to the practical politics of to-day, but we indicate that here is a field for it. There may be immoral laws which it is our duty to resist, and there are other immoral laws which it is our duty to suffer. Unequivocal questions of right or wrong are right or wrong *eo ipso*, but under special circumstances it becomes needful to have them formulated as laws by the legislative bodies, so that they shall bear upon them the stamp of legality and no wrong construction of them shall affect the order of the State. Doubtful questions of right or wrong, however, must be decided; as long as they are doubtful, they can only be decided provisionally, and we have as yet in republics as in monarchies no other means of deciding them than by a majority vote of the legal authorities. A wrong decision does not make wrong right, it only enforces it; but so long as we have no better means of testing right and wrong we must employ the insufficient method we have; we have to count votes, instead of weighing them.

The system of deciding questions by a majority vote is a mere expediency, we grant; but it is the only method of settling doubtful questions that must be settled, one way or another; and in certain public affairs it is better that such questions be wrongly settled, than not settled at all. We grant still more; we grant that this method does not prevent the passage of bad laws, and it may be very difficult to draw the line,

where, for the sake of public peace, they should be obeyed, and where they should be met with resistance. This concession, however, is by no means an indictment of republican institutions and their methods; for the same objection must be made against the laws of monarchies; and in this respect monarchical State institutions have sinned in no less degree than republics. Monarchies have not only made the very same mistakes that republican authorities have made, but many additional ones, which will remain, as we hope, a peculiar feature of monarchies.

THE AUTHORITY OF THE STATE AND THE RIGHT TO REVOLUTION.

THE existence of a common will in a tribe is a fact, and the existence of the State, as the consciously organised common will of a certain society, is also a fact. The question, however, arises, Is this power a usurpation? Is it not perhaps an unjustifiable and odious tyranny? And if it is to be recognised as a legitimate power, on what authority does it rest?

The old explanation of State authority is the Tory explanation, that royalty exists by the grace of God. The latest and perhaps (in Protestant countries, at least) the last defender of the Tory system was Friedrich Julius Stahl (born in 1802 of Jewish parentage, baptised in 1819, called to the University of Berlin in 1843 by the King of Prussia, Frederick William IV., became the leader of the ultra-conservative party 1848–1861, the year of his death; his main work was "Die Philosophie des Rechts," 3 vol.)

Stahl's criticism of the old *jus naturale* is poor; his

Jewish-Christian conceptions of a supernatural revelation prevented him from seeing the truth, which in spite of some errors was contained in that idea of classic antiquity. His famous demand of "Die Umkehr der Wissenschaft," (viz., that science should return) is a sin against the Holy Ghost, who reveals himself in the progress of science. Rejecting the view of the ancients concerning the authority of the State, he founded it upon God's ordinance. The State, according to Stahl, is *Gottes Weltordnung*; it is a human institution founded upon divine authority; it is the establishment of a moral empire.

Stahl is a reactionary thinker; State authority (*Obrigkeit* or *Staatsgewalt*), according to his view, stands absolutely opposed to the idea of popular sovereignty; the former represents the idea of legitimacy, the latter the principle of revolution. Stahl stood in conscious and outspoken opposition to the doctrine of Frederick the Great, in whose conception the sovereign had become a mere servant of the State. Stahl sees in the sovereign a representative of God; the sovereign rules over his subjects, whose sole business it is to obey. These are antiquated ideas, to refute which is almost redundant in Anglo-Saxon countries, the institutions of which are established upon successful revolutions. Stahl was a genius of great acumen and profound philosophical insight, yet his face was turned backwards, and so he had not the slightest inkling of the

ideal State, which, it appears to us, it is the duty of the Anglo-Saxon races to realise.

Stahl is right, however, in so far as he maintains that the State is actually the realisation of a moral empire. That is to say, the State is, as the Roman sages thought, based upon the *jus naturale*; it is a natural product of evolution, and as such it reveals the nature of that All-power, which religious language hails by the name of God.

When we speak of God, we must be careful in defining what we mean, for it may either be an empty phrase or the cover under which oppressions mask their schemes for usurping the power of government.

When we grant that the State is a divine institution, we mean that its existence is based upon the unalterable laws of nature. All facts are a revelation of God; they are parts of God and reveal God's nature; but the human soul and that moral empire of human souls called the State are more dignified parts of God than the most wonderful phenomena of unorganised nature.

It is customary now to reject the idea of *jus naturale* as a fiction, to describe it as that which according to the pious wishes of some people ought to be law, so that it appears as a mere anticipation of our legal ideals appealing to the vague ethical notions of the people. Law, it is said, is nothing primitive or primordial, but a secondary product of our social evolution, and the intimation of a *jus naturale* is a fairy-tale of metaphys-

ics, which must be regarded as antiquated at the present stage of our scientific evolution. It is strange, however, that those who take this view fall back after all upon nature as the source of law; they derive it from the nature of man, from the natural conditions of society, and thus reintroduce the same old doctrine under new names—only in less pregnant expressions. Most of these criticisms are quite appropriate, for there is no such thing as an abstract law behind the facts of nature; no codified *jus naturale*, the paragraphs of which we have simply to look up like a code of positive law. In the same way there are no laws of nature; but we do not for that reason discard the idea and retain the expression. If we speak of the laws of nature, we mean certain universal features in the nature of things, which can be codified in formulas. Newton's formula of gravitation is not the power that makes the stones fall; it only describes a universal quality of mass concisely and exhaustively. In the same way the idea of a *jus naturale* is an attempt to describe that which according to the nature of things has the faculty of becoming law. The positive law is always created by those in power; if their formulation of the law is such as would suit their private interests alone, if for that purpose they make it illogical or unfair to other parties, it will in the long run of events subvert the social relations of that State and deprive the ruling classes of their power; in one word, being in conflict with the nature of things it will not stand. If, how-

ever, the codification of rights properly adjusts the spheres of the various interests that constitute society, if it is free of self-contradictions and irrational exceptions, it will stand and enhance the general prosperity of society. The former is in conflict with the *jus naturale*, the latter in agreement with it.

Thus we are quite justified in saying that the positive law obtains, while the natural law is that which ought to obtain; the positive law has the power, the natural law the authority; and all positive law is valid only in so far as it agrees with the natural law; when it deviates from that, it becomes an injustice and is doomed.* In a word, the *jus naturale* is the justice of the positive law and its logic. That its formulation is not directly given in nature, and that it is difficult to comprehend it in exact terms, must not prevent us from seeing its sweeping importance. If there were no such constant features in the nature of society which are the leading motives of all the historical evolutions of the positive law, our conceptions of right and wrong would have to be regarded as mere phantoms, and our ideal of justice would be merely a dream.†

* See Jodl's lecture *Ueber das Wesen des Naturrechtes*, Wien, 1893.

† The problem is at bottom the same as the problem of reason, of logic, arithmetic, and all the formal sciences. There have been people who think that the world-reason is a personal being who permeates the world and inserts part of his being into rational creatures. In opposition to them, other philosophers deny the existence of a world-reason and declare that human reason is of purely subjective origin, an artificial makeshift, a secondary product of very complex conditions. We regard both parties as partially right and partially wrong; we say: There are certain immutable features in the relations of things, which, in their various applications, can be formulated in logic, arithmetic, geometry, and all the other formal sciences. Thus, human reason

There are wrong conceptions of the *jus naturale*, but there is also a right conception of it. In the same way there are pagan conceptions of Christianity and there is a purified conception of it. Stahl did not see that the true conception of the *jus naturale* is the same as the purified conception of Christianity. For the purified conception of Christianity is monistic; it regards natural phenomena as the revelations of God, and the voice of reason as the afflatus of the Holy Ghost.

The State is a human institution, but *as such* it is as divine as man's soul; the State should not consist of rulers and ruled subjects, but of free citizens. And yet we must recognise the truth that the State is a superindividual power, and that the laws of the State have an indisputable authority over all its members.

* * *

When we say the State is divine, we do not mean to say that all the ordinances of government are, *a fortiori*, to be regarded as right. By no means. We might as well infer that because man's soul is divine all men are saints, and their actions are *eo ipso* moral. Oh, no! The State institution, as such, and the human soul, as such, are divine; they are moral beings and more or less representative incarnations of God on earth.

is after all a revelation of the world-reason. The world-reason, it is true, is no personal being, yet does it exist none the less; being a feature of facts, it possesses an objective reality. Its formulation is an abstract concept of the human mind, but, with all that, it is not a mere fiction, a vain speculation, or an aberration from the truth.

The State is truly, as Stahl says, a moral empire, or, rather, its purpose is the realisation of a moral empire on earth. The State is, religiously speaking, God's instrument to make man more human and humane, to teach him more and more to perfect himself, and to actualise the highest ideals of which he is capable. But the State of Stahl's conception can beget a bastard morality only; it represents the ethics of the slave, which consists in obedience; it does not represent the ethics of the children of the free, which alone can develop true and pure morality.

The State, in order to become a moral empire, must recognise the rights of the individual and keep his liberty inviolate.

The principle of individualism arose out of a revolt against the principle of suppression. The individualistic movement is a holy movement, beginning with Luther, represented by Kant, but breaking down in its one-sided application in the French Revolution. Individualism is the principle of the right to revolution, but the right to revolution is a religious right; it is a duty wherever tyranny infringes upon the liberty of its subjects, wherever it interferes with the natural aspiration of citizens for higher ideals, and wherever it prevents progress.

The old governments were class-governments. We cannot investigate here the extent to which this state of things was a necessary phase in the evolution of the State; but we maintain that the breakdown of these

forms was an indispensable condition to a higher advance. The old State consists in the organisation of governments with subjects to be governed, the new State is the organisation of free citizens to realise the ideal of a moral community.

The old State is based upon the so-called divine right of kings, an organisation of a few rulers or of the ruling classes. The new State must be the organised common will of the people; and its authority is the divinity of the moral purpose which this common will adopts. The government should not do any ruling or mastering, the government should simply be an administration of those affairs which the common will, for good reasons, regards as public.

The ideal of the new State can be put into practice only where the common will is animated by a common conscience; and this common conscience should not be a tribal conscience justifying every act that would be useful to, or enhance the power of, this special people as a whole: the common conscience must be the voice of justice; it must recognise above the State-ideal the supernational ideal of humanity, and must never shrink from acting in strict accordance with truth and the fullest recognition of truth.

If the State is to be based exclusively upon the principle of individualism, the State will break down, but if the State is recognised as an embodiment of the moral world-order, it will adopt the principle of individualism as a fundamental maxim, for without liberty

no morality. The slave has no moral responsibility, the free man has.

From these considerations we regard the principle of individualism as the most sacred inheritance of the revolutionary efforts of mankind, which, becoming victorious in Luther's time, still remain so. We do not reject the truths of former eras: on the contrary, we prove all things, and, discriminating between the evil and the good, we keep that which is true. In preserving the ancient idea that the State is founded upon the immutable order of nature, and the Christian idea that the purpose of the State is the realisation of moral ideals, we avoid the one-sidedness and errors which naturally originate when a man in controversy, as a method of effectually resisting his adversary, denies that there is any truth at all in his opponent's views, and out of mere spite indiscriminately opposes all his propositions.

THE MODERN STATE BASED UPON REVOLUTION.

AMONG the ancients the State was a religious institution, and the State's authority was to Greek citizens not less ultimate than that of the Pope is to Roman Catholics. Socrates attended to his duty of voting against the unanimous fury of the Athenian mob when the ten generals after the victorious battle of Arginusæ were unjustly condemned to death. But he did not venture to oppose an unjust law as soon as it had become law. He obeyed the law when it most outrageously condemned him to death; he might, with the connivance of the authorities, have easily made his escape, but he preferred to stay and to die. Very different from this attitude was the position of Sophocles. He was imbued with the same spirit as our Protestant heroes, a Milton, a Luther: he preached disobedience to immoral laws. Antigone says:

> "It was not Zeus who gave them forth,
> Nor Justice dwelling with the Gods below,
> Who traced these laws for all the sons of men;
> Nor did I deem thy edicts strong enough,

That thou, a mortal man, shouldst over-pass
The unwritten laws of God that know no change.
They are not of to-day nor yesterday,
But live forever, nor can man assign
When first they sprang to being. Not through fear
Of any man's resolve was I prepared
Before the gods to bear the penalty
Of sinning against these."

Sophocles ranks the unwritten laws of the morally right above the legality of State-laws. In a conflict between the two, the former is to be regarded as the superior authority, and justly so, for the State's authority rests upon the moral law, and it is the State's duty and its ultimate end of existence to realise the moral law in establishing a moral community.

The Saxon nations represent the revolutionary principle in history, and they are proud of it. Historians unanimously praise Hampden's resistance to the payment of ship-money. Hampden became a martyr of the revolutionary principle, viz., the right to resist illegal impositions of government, and such resistance was with him a religious duty. The free England of to-day gratefully remembers his services in the cause of freedom. The sinking of the three vessels of tea was in some respects a boisterous student's joke, but it was prompted by this same revolutionary spirit which makes it a duty to resist unjust laws; and to fail in this duty is regarded as a sign of unmanliness.

Resistance is right when the State-authority comes into conflict with moral laws. But who shall illumine the minds of the people? Who shall decide whether

their own views of right and wrong are correct or not? Even such a scoundrel as Guiteau while standing on the scaffold shouted "Glory, glory Hallelujah!" We can only say that every case must be considered by itself, and every one who feels called upon to stand forth as a champion for his particular ideal of right and justice, must take the consequences. Mr. Hampden lost his fortune and nobody ever replaced it, and yet we feel sure that if we could arouse him from his slumber in the grave and ask him whether he regretted it, he would most positively uphold his old conviction ; he would be proud of the subsequent course of events, which justified his action, although it had ruined his life, and he would be glad to know that the same spirit that prompted him is still alive in the Saxon races.

The revolutionary spirit of the Saxon races possesses one peculiarity: it is based upon manliness and love of justice, i. e., upon the higher morality of the unwritten law ; it is pervaded by a moral seriousness and supported by a religious enthusiasm. And this is the secret why the English revolution and the American revolution were successful. They did not come to destroy, but to remove the obstacles to building better than before.

With all this unreserved appreciation of the revolutionary principle, we are by no means inclined to say that it is our duty to resist any and every immoral law. On the contrary, we should consider it as a public calamity if every one who has peculiar and dissenting

views from our legislative bodies concerning the morality of a certain law, should resort to open rebellion.

The method of settling questions of right or wrong by the majority votes of legal representatives has, with all its faults, also its advantages. Problems as to the fairest methods of taxation, as to restrictions for temporary exigencies, as to peace or war on a given provocation, etc., have a deep moral significance and should be decided not according to private interests or party politics, but solely from the moral view of the subject. Should, however, a popular error concerning their right solution be so prevalent as to make it possible to procure for it a majority vote, we may, on the one hand, deeply regret the lack of the people's insight, but must, on the other hand, grant that under the circumstances and in a certain way it is good that the State should act according to the erroneous notion popular at the time ; for the people, if not amenable to reason and the sense of right, should find out their mistake by experience, so that the public mind may be educated.

The justice of the revolutionary principle can be doubted only by those who regard morality as a blind obedience to authority. We demand a higher conception of morality ; we require that the truth shall be openly investigated, and that truth itself, not a representative of truth, as a pope, or a church, or dogmatic formulas, shall be the ultimate authority of conduct in life.

This is the spirit of the new dispensation, and this, too, is the basis upon which we build our national life. And we are conscious of the fact that we stand upon a higher moral ground than those who praise submissiveness to this or that authority, which is regarded as a divine institution, and derives its power directly from the grace of God, according to sacred revelations which are said to be infallibly right and reliable, even where they are in conflict with facts and where they flatly contradict reason.

The revolutionary principle has been doubted by some, not on account of its justice, but on account of its alleged impracticability. Its success, however, among the Saxon nations, with their consequent unprecedented and unrivalled advance in industry, trade, literature, art, and general prosperity, can no longer be doubted. Those nations alone possess the future who sanction this revolutionary spirit, based upon the higher morality of manliness and freedom.

The modern State-ideal (which is not an embodiment of individualism, for that would make the State itself impossible, but which recognises nevertheless the principle of individualism) procures for its members a wider liberty and a fuller justice, thus removing all the shackles that prevent progress or hinder the free pursuit of righteous enterprises.

The State which in opposition to the Church came to be regarded as a profane institution, is now again sanctified as a moral power, having moral aims, exist-

ing for a holy purpose, and destined to realise and to help its citizens to a life according to the highest ideals of humanity. The State is a moral institution, and it is therefore our duty, according to the precedent of Christ, one of the first and greatest representatives of the revolutionary spirit on earth, to drive out of its halls those who barter there for private gains. The State does not exist to be a den of thieves, and it is but right to cast out the money-changers and those who sell and buy in this most sacred temple, built of the souls of men.

TREASON AND REFORM.

THE question now arises, Can there be in a State which recognises the justice of the revolutionary principle, any such thing as treason? We answer that there is.

Treason, according to our definition, is any act which, as the result of conscious and deliberate purpose, tends to undermine the existence of the State; and treason is not merely a punishable offence, it is one of the gravest crimes that can be committed.

In giving this definition, however, it must be added that the name "traitor" has been flung at every revolutionist, at every advocate of the rights of the oppressed, and at every reformer. Not every revolution is treason. Those revolutions which stand upon moral grounds, being, as it were, an appeal to the unwritten laws of our highest ideals, are aspirations for reform; they are attempts to replace any traditional law, which, from the standpoint of a more humanitarian justice, is felt to be unjust. Treason is that kind of revolution which comes to destroy, which is not based upon moral

motives and does not bring to the front a higher moral conception.

It is very difficult to draw any well-defined line between treason and reform, especially when it is remembered that every reform appears necessarily as treason to a conservative mind. As to would-be reformers, who commit acts of treason in the vain hope of doing a good work of progress, we can only say that they take their chances. If a man is not positively sure that his resistance to the law is a true act of reform, or a better and juster arrangement of society, he had better leave the work to other men; and even those men who feel quite sure that they are called upon to become reformers should carefully question their own sentiments, lest their vanity inveigle them to enter upon a thorny path, which to them appears as one of martyrdom, but in fact is only the error of an empty dream. Both will suffer equally, the reformer and the vainglorious prophet of error, but the former only will live as the martyr of a great cause; the latter will perish without even being respected or even so much as pitied by following generations.

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